

# قوسٲ ٲمبغ ٲارا بروني دارالسلام برحد

**BRUNEI DARUSSALAM ARBITRATION CENTRE BHD  
(BDAC)**

**FREQUENTLY ASKED QUESTION**

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## FREQUENTLY ASKED QUESTIONS (FAQ)

### 1. WHAT IS ARBITRATION?

Binding arbitration is a means of resolving a dispute that is private, less formal, less costly and less time-consuming than traditional litigation. The parties agree to submit their dispute to an impartial arbitrator authorized to resolve the controversy by rendering a final and binding award. A matter may proceed to arbitration usually in a matter of months, instead of the several years it may take to have a case heard in court.

The matter is heard in a conference room, as opposed to a courtroom. The court's rules of evidence are not strictly applicable, and there is usually no significant motion practice. Formal rules of discovery do not apply, although the arbitrator may allow for some discovery, such as production of relevant documents and depositions under oath.

### 2. WHAT IS THE BRUNEI DARUSSALAM ARBITRATION CENTRE BERHAD (BDAC)?

Brunei Darussalam Arbitration Centre Berhad (BDAC) is a non-profit making company limited by guarantee and governed by a Board of Directors which consists of members from legal professions.

### 3. WHY BRUNEI DARUSSALAM AS A VENUE FOR ARBITRATION?

- a. A stable country economically and politically and one of the countries with high level of integrity and low rate of corruption. It ranked 31<sup>st</sup> in the Corruption Perception Index in 2018, 2nd in ASEAN and 6th in Asia-Pacific;
- b. A country which promotes business environment and encourages foreign investments;
- c. Brunei Darussalam's legislations on arbitration are based on the UNCITRAL Model Law;
- d. Brunei Darussalam is a party to the 1958 New York Convention (on enforcement of arbitration awards). Arbitral awards are therefore enforceable in 149 countries;
- e. Courts' support of arbitration with minimum intervention in arbitration proceedings.

### 4. WHAT IS THE DIFFERENCE BETWEEN INTERNATIONAL AND DOMESTIC ARBITRATION?

Arbitrations taking place within the boundaries and jurisdiction of the country between parties of same nationality is a domestic arbitration, while international arbitrations arise between parties of different nationality and countries.

### 5. CAN BDAC PROVIDE LEGAL ADVICE?

No. In its position as an independent and neutral arbitration institution, BDAC does not act on behalf of any party in arbitration proceedings, nor does it provide any legal advice.

### 6. WHAT ARE THE BENEFITS OF ARBITRATION?

Arbitration is a less formal process than court litigation, and it is conducted in private, away from the glare of the media and the public. Parties to the arbitration, as well as arbitrators, are generally obliged to maintain the confidentiality of all matters relating to the arbitration proceedings and the arbitration award.

- Parties are free to appoint their own arbitrators, engage their preferred counsel (lawyer) and choose the procedures and rules for the conduct of an arbitration;
- Parties are generally assured of finality once the arbitration award is issued as there are limited avenues for appeal against an arbitration award;
- The arbitration process can be more cost-effective and efficient than court litigation.

## **7. WHAT IS THE ARBITRATOR'S ROLE?**

The arbitrator acts as a private judge, and will make a ruling that is binding on the parties. If deemed necessary, the decision is enforceable in a court of competent jurisdiction.

## **8. WHAT IS MY ROLE AT THE ARBITRATION?**

Although it is more informal than traditional litigation, arbitration is an adversarial process. You will be required to present your case by calling witnesses and presenting documentary evidence, and making arguments to persuade the arbitrator that he or she should rule in your favor.

## **9. HOW MUCH DOES ARBITRATION COST?**

The cost will vary depending on the arbitrator's fee, the complexity of the case, and the length of the arbitration. Arbitrators will charge the parties for pre-hearing conferences and review of documents, as well as time spent preparing the award. The arbitrator's final award may assign the burden of paying attorney's fees, the amount of the judgment, and/or other costs to the appropriate party.

## **10. HOW LONG DOES ARBITRATION LAST?**

It usually takes several months for parties to do the necessary discovery and other work to prepare for an arbitration. The hearing itself usually will last anywhere from one day to a week or more.

## **11. IS THE PROCESS CONFIDENTIAL?**

The proceedings are private and not open to the public. There is no transcript of the proceedings unless one party chooses to incur the expense of obtaining a transcript. All persons permitted to be present, such as the parties and their representatives, and witnesses who have completed their testimony, are allowed to hear the testimony of other witnesses, which is given under oath. The final decision of the arbitrator is confidential, unless a party finds it necessary to enforce the decision in court.

## **12. DO I NEED A LAWYER?**

You do not necessarily need a lawyer, though you may deem it advisable to retain one, since the process is adversarial in nature. The expenses of retaining your own lawyer must be borne by you.

**13. WHO WILL THE ARBITRATOR BE?**

The Arbitrator will be someone that both parties agree to. You may obtain a list from where you initiate your proceedings of impartial, qualified employment arbitrators in your area, or you may simply agree to an arbitrator the parties choose together. A person who has served as a Mediator may not later serve as an Arbitrator. (BDAC Rule 4 (5 & 6)).

**14. HOW DO I INITIATE AN ARBITRATION?**

If you have signed a contract already containing an arbitration clause, you should read and follow the requirements in the contract. If the parties have already agreed to arbitrate, simply contact us by phone at 2240731 or email us at info@bdac.com.bn. We will be in touch with you to provide further information and contact the parties involved at your request. (BDAC Rule 2 – Commencement of Arbitration).

**15. CAN ANY PARTY APPEAL IF THE DECISION IS FELT UNFAIR?**

Under a few limited circumstances, such as after-discovered bias on the part of the arbitrator, arbitrary and capricious decisions, or newly-discovered evidence, a party may ask the arbitrator to reconsider the decision, or appeal to a court to overturn a decision.

**16. IS THERE A MINIMUM OR MAXIMUM CLAIM AMOUNT FOR BDAC ARBITRATIONS?**

No. There is no minimum or maximum claim amount for cases to be administered by BDAC. (BDAC Arbitration Rules: Schedule 1 – Schedule of Fees)

**17. BDAC'S OPERATING HOURS**

BDAC's operating hours are from Monday to Friday, 9.00 am to 5.00 pm (Brunei time). However you can contact us at all times via info@bdac.com.bn. More information can be obtained from www.bdac.com.bn.

**18. CAN BDAC PROVIDE A SAMPLE NOTICE OF ARBITRATION?**

No. BDAC does not provide a template for the Notice of Arbitration, and parties are free to submit the Notice of Arbitration in their preferred format. The Notice of Arbitration, however, should comply with the formal requirements set out in BDAC's Arbitration Rules. (Rule 2 – Commencement of Arbitration).

**19. DOES BDAC HAVE A MODEL ARBITRATION CLAUSE?**

Yes. In drawing up domestic as well as international contracts, BDAC recommends that parties include the BDAC Model Clause:

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Brunei Darussalam Arbitration Centre Berhad ("BDAC") in accordance with the Arbitration Rules of the Brunei Darussalam Arbitration Centre Berhad ("BDAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be [Brunei Darussalam].

The Tribunal shall consist of \_\_\_\_\_ \* arbitrator(s).

The language of the arbitration shall be \_\_\_\_\_.

Parties should also include an applicable law clause:

This contract is governed by the laws of \_\_\_\_\_ . \*\*

\* State an odd number. Either state one, or state three.

\*\* State the country or jurisdiction.

## **20. CAN A PARTY COMMENCE ARBITRATION AT BDAC WITHOUT AN ARBITRATION CLAUSE?**

No. Unless there is an arbitration clause in the contract or parties have a post-dispute agreement to refer the dispute to arbitration at BDAC or arbitration in accordance with the BDAC Rules, BDAC will not be able to administer the arbitration.

## **21. WOULD AN ARBITRATION CLAUSE WHICH PROVIDES FOR “ARBITRATION IN BRUNEI DARUSSALAM” BE SUFFICIENT FOR BDAC TO ADMINISTER THE ARBITRATION UNDER THE BDAC ARBITRATION RULES?**

No. An arbitration agreement referring to “arbitration in Brunei Darussalam” may not sufficiently provide for BDAC-administered arbitration, although it may provide for ad hoc arbitration seated in Brunei Darussalam.

To ensure that parties’ intention for arbitration at BDAC under the BDAC Arbitration Rules is reflected in the contract, parties may wish to use the BDAC Model Clause.

## **22. HOW DOES A CANDIDATE APPLY TO BECOME BDAC’S PANEL OF ARBITRATORS?**

To be part of BDAC’s panel of arbitrators, please send a completed application form (downloadable from our website) as well as your curriculum vitae (CV) highlighting your arbitration experience. Currently BDAC does not charge any processing fee for both domestic and international applicants.

## **23. MUST ARBITRATORS BE LAWYERS?**

No. Subject to the circumstances of the case, it is not necessary for arbitrators to be lawyers or to have a legal background. As an example, there are engineers, quantity surveyors and architects who are on BDAC’s Panel of Arbitrators.

## **24. WHAT IS THE DIFFERENCE BETWEEN ARBITRATION AND MEDIATION?**

In arbitration, the arbitrator looks into the legal rights and wrongs of a dispute and makes a decision. Once the arbitrator has arrived at a decision, it is binding on parties whether they agree with it or not. It is very much like the way a court case is decided by a judge, except that the process does not take place in a courtroom, and it is not open to the public. As in a court case, there is usually a winning and a losing party in arbitration.

In mediation, the mediator helps parties to settle their disputes through a process of discussion and narrowing of differences. The mediator helps the parties to arrive at an agreed solution. He does not decide the dispute. A successful mediation results in a settlement agreement signed by the parties, whereas a contested arbitration results in a decision by the arbitrator. In mediation, there is no such thing as a winning or losing party because there is no binding decision. Instead, the parties are free to agree on both legal and non-legal solutions to the dispute which best suit their respective interests and needs.

BDAC caters both domestic and international arbitrations as well as mediations in Brunei Darussalam.

**25. DOES BDAC ACT AS AN APPOINTING AUTHORITY?**

Yes. The Chairman of Brunei Darussalam Arbitration Centre Berhad is the default appointing authority in Brunei Darussalam.

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Updated as of 26<sup>th</sup> March 2019